

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DELTA NATURAL GAS COMPANY, INC.)	
)	
COMPLAINANT)	
)	
VS.)	CASE NO. 10419
)	
TRANEX CORPORATION)	
)	
DEFENDANT)	

O R D E R

This matter arises upon the filing of a complaint by Delta Natural Gas Company, Inc. ("Delta") against Tranex Corporation ("Tranex") alleging that Tranex had constructed facilities and was selling natural gas to Mid-South Electric Company, Inc. ("Mid-South") at its Sexton's Creek plant in Clay County, Kentucky.¹ Delta stated that it had served Mid-South in Clay County for several years and remained willing and able to continue service to the Sexton's Creek plant. Delta requested the Commission order Tranex to cease and desist from providing natural gas to Mid-South at the Sexton's Creek plant and further order that Delta continue such service.

¹ Mid-South operates two plants in Kentucky: one at Sexton's Creek which is the subject of this action, and a second at Annville, in Jackson County, Kentucky.

Tranex answered Delta's complaint on November 22, 1988 generally denying that it had constructed facilities to sell natural gas to Mid-South. Tranex further denied that construction of facilities for the sale of natural gas to Mid-South constituted a duplication of facilities. Delta subsequently amended its complaint to include Annville Gas Transmission, Inc. ("Annville") as a party defendant alleging specifically that facilities had been constructed and natural gas was being sold by Tranex to Annville who in turn sold the gas to Mid-South at Sexton's Creek. Delta further characterized the scope of Annville's activities as purchasing, transporting, and selling natural gas in Jackson and Clay counties, Kentucky. Delta stated that Annville and Mid-South are owned, wholly or in part, by members of the Weaver family and the common ownership makes the sale of natural gas by Tranex to Annville a sale to Mid-South. Finally, Delta alleged that Annville's service to Mid-South at Sexton's Creek constituted a physical bypass of Delta's facilities as defined by Commission Order in Administrative Case No. 297.²

The amended complaint was answered by both defendants on March 6, 1989; however, by Order dated October 12, 1989, Tranex was dismissed as a party defendant. A hearing on the complaint was subsequently held on February 7, 1990 at the Commission's

² Administrative Case No. 297, Investigation of the Impact of Federal Policy on Natural Gas to Kentucky Consumers and Suppliers, Orders dated May 29, 1987 and on rehearing October 23, 1987.

offices. All parties were represented by counsel. Briefs were filed on March 7, 20, and 26, 1990.

After consideration of the arguments of counsel, the record in this matter, pertinent statutes and regulations, and being otherwise sufficiently advised, the Commission finds that the relief requested by Delta should be granted based upon the following findings and conclusions.

Delta is a natural gas local distribution utility as defined by KRS 278.010(3) and is jurisdictional to this Commission. Annville is a natural gas local distribution utility as defined by KRS 278.010(3) whose facilities were certificated by this Commission in Case No. 10480.³ In that proceeding, Annville represented its operations to the Commission as providing natural gas to the Anastasi Greenhouse and the Mid-South plant at Annville in Jackson County. The Mid-South plant at Sexton's Creek was a continuous retail gas customer of Delta from 1981 until October 1988 when the plant terminated its service; Annville apparently began serving Mid-South immediately after service was terminated with Delta. At no time did Annville seek or was Annville granted a certificate of convenience and necessity permitting a physical bypass of Delta's local distribution facilities.

In its brief, Annville argues that it is a utility only in Jackson County and not in Clay County where Mid-South's Sexton

³ Case No. 10480, Application of Annville Gas and Transmission, Inc. for Approval to Operate a Natural Gas Distribution System, Order dated December 1, 1988.

Creek plant is located. Annville acknowledges that in 1987 it requested that Tranex supply gas to the Sexton's Creek plant; however, Annville argues that the Sexton's Creek plant is merely a "department" of Mid-South's plant in Jackson County. As such, Annville argues that it is not supplying gas to a third-party at Sexton's Creek, it is supplying gas to itself. While not stated explicitly in its brief, Annville appears to base its conclusion on the common ownership of Annville and Mid-South by the Weaver family.⁴ Annville is further of the opinion that the Commission approved the tap that was made on Tranex pipeline which allows gas to flow from Tranex to Mid-South's plant at Sexton's Creek. This opinion is based upon a series of letters between Tranex and Commission Staff⁵ in which Tranex describes its activities, including the tap on its line to supply gas to Mid-South's plant in the Manchester (Sexton's Creek) area. However, Annville is advised that the Commission speaks only through an Order, and the Commission notes that no such Order has been issued regarding the tap which allows gas service to Mid-South's plant at Sexton's Creek to occur.

Delta argues that Annville's actions in bypassing to serve an existing Delta customer deprive it of revenues and constitutes an

⁴ Brief of Annville at 2.

⁵ Id. Although Annville in its brief refers to a series of letters dated December 15, 1987, January 21, 25 and March 15, 1988 between Tranex and Commission Staff, those letters were not made part of the record in this proceeding.

unwarranted duplication of facilities that is damaging to the public interest. Delta further argues that the series of letters between Commission Staff and Tranex referenced by Annville, pertain to the status of Tranex as a utility and have nothing to do with the operational status of Annville.

By Order dated May 29, 1987 in Administrative Case No. 297, this Commission directed that any "[u]tility proposing physical bypass of an LDC in order to accommodate the use of natural gas by an end-user should be required to make application. . . requesting a certificate of convenience and necessity to bypass the LDC. . . Following a determination that any proposed construction does not represent a duplication of facilities, and that the proposed bypass is in the public interest, a certificate of convenience and necessity may be issued under the terms of KRS 278.020." Based upon the foregoing, Annville is in violation of KRS 278.020, 807 KAR 5:001, Section 9(2), and the Commission's Order of May 29, 1987 in Administrative Case No. 297 in failing to apply for and obtain a certificate of convenience and necessity to bypass Delta's facilities at Sexton's Creek to supply gas to an existing Delta customer.

In the event Annville desires to provide gas service to the Mid-South plant at Sexton's Creek, whether retail or transportation service, it must first apply to the Commission for a certificate to bypass the Delta system pursuant to KRS 278.020 and the Commission Order in Administrative Case No. 297. Annville should, therefore, cease to provide gas service to the Mid-South

plant at Sexton's Creek, Clay County, Kentucky, within 20 days of the date of this Order.

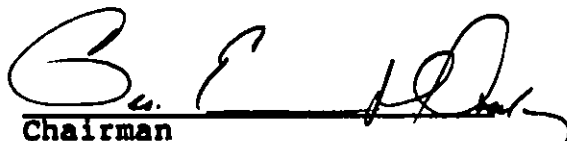
IT IS THEREFORE ORDERED that:

1. Delta shall notify Mid-South in writing, with a copy to the Commission that it is ready, willing, and able to recommence gas service to Mid-South's Sexton's Creek plant within 10 days of the date of this Order.

2. Annville shall notify Mid-South that Annville's service to Mid-South's Sexton Creek plant shall be terminated within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 16th day of July, 1990.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director